



Internet Email: opd@opd.wa.gov

**WASHINGTON STATE
OFFICE OF PUBLIC DEFENSE**

(360) 586-3164
FAX (360) 586-8165

TO: County Officials

FROM: Joanne Moore, Director

DATE: June 15, 2010

RE: Procedure for applying for public defense funding for the 2011 calendar year

Applying for public defense funding

RCW 10.101.050 allows counties to apply for a pro rata share of appropriated state funds to improve the quality of public defense services for juveniles and adults. Attached is an application for state public defense funds (the application is also available at www.opd.wa.gov) and a table of the estimated pro rata share available to each county for use during calendar year 2011.

Please note that the estimated funding amounts for each county may differ from current funding amounts. The differences are due to state budget and administrative factors as well as each county's increase or decrease in population and/or felony filings. Population and felony filings are significant components of the funding distribution formula in RCW 10.101.070.

Completed funding applications are due by Monday, August 16, 2010. The Washington State Office of Public Defense (OPD) will notify applicants of funding authorization by late October and will disburse funds no later than the first week of January 2011. Application materials may be submitted as an email attachment or in hard copy. (No faxes please.)

Chapter 10.101 RCW requires that the state funds be used to make appreciable demonstrable improvements in the delivery of public defense services. Attached to this application is an updated policy on allowable uses for the funding. Pursuant to statute and OPD policy, state funds cannot be used to supplant county funds that were being spent on public defense services prior to the initial disbursement of state funds (2006 for most counties).

RCW 10.101.060 conditions eligibility for continued funding upon a county's efforts to ensure that well-qualified attorneys handle the most serious cases; that contracts with attorneys provide for county funding of court-ordered expert and investigator costs independent of attorney compensation; and that counties set up a valid method for appointing conflict counsel. Most county public defense agencies and contracts already meet these requirements. OPD will continue working with counties in 2011 regarding compliance with all requirements of Chapter 10.101 RCW as well as applicable case law and court rules.

For information regarding the improvement of public defense services or this application, contact OPD Public Defense Services Managers Kathy Kuriyama or David DeLong at kathy.kuriyama@opd.wa.gov or david.delong@opd.wa.gov.

APPLICATION FOR RCW 10.101 COUNTY GRANTS

County_____	Contact name/title_____
Mailing address_____	
Phone_____	Email_____

NOTE: Completed applications are due to OPD by Monday, August 16, 2010.

1. In 2009, the county paid indigent defense expenses as follows¹:

1a. \$_____	512.81 –General Indigent defense	For jurisdictions that only report under this sub-category, all costs as defined in 512.80. For jurisdictions that report in multiple sub-categories, only costs not otherwise provided for by case type should be reported in this category, such as civil contempt proceedings in child support and paternity actions.
1b. \$_____	512.82 – Adult Felony	All costs associated with providing legal counsel and services for indigent adult persons charged with a felony offense in the Superior Court and juvenile offenders charged with a felony under a statutory decline or following a decline hearing in Juvenile Court. Additionally, costs arising from the following actions should be reported in this category: fugitive complaints; special inquiry proceedings; material witness proceedings; coroner inquest proceedings; hearings or proceedings on remand from appellate courts; personal restraint petitions; and habeas petition hearings in Superior Court where counsel is appointed.
1c. \$_____	512.83 – Adult Misdemeanor	All costs associated with providing legal counsel and services for indigent adult persons charged with a gross misdemeanor or misdemeanor offense in a district or municipal court including the cost of RALJ appeals to Superior Court.

¹ **BARS Code 512.80 defines Indigent Defense as follows:**

All costs associated with providing legal counsel and services for indigent persons in criminal, civil, and juvenile matters for which the provision of counsel at public expense is provided for by law. Costs to be included are attorney salaries and benefits of contract costs for conflict counsel fees, expert witnesses, investigators, psychological and other examinations, evidence testing, etc. Interpreter costs should only be included for non-court hearing related interpreter services or interpreter services not otherwise provided under the auspices of the trial court.

1d. \$_____	512.84 – Juvenile Offender	All costs associated with providing legal counsel and services for indigent juvenile persons charged with a felony, gross misdemeanor or misdemeanor offense in Juvenile Court including motions to revise rulings by court commissioners in juvenile cases heard in Superior Court.
1e. \$_____	512.85 – Juvenile Dependency and Termination of Parental Rights	All costs associated with providing legal counsel and services for indigent <u>parents</u> eligible for the appointment of counsel at public expense whose child(ren) are the subject of a dependency or termination of parental rights action in Juvenile Court. Costs associated with the appointment of an attorney to represent a child should be included in this category. Costs associated with the appointment of a guardian ad litem to represent the interests of a minor child should not be reported.
1f. \$_____	512.86 – Truancy, At-Risk-Youth, CHINS	All costs associated with providing legal counsel and services for minor children named in a “BECCA case,” including at-risk-youth; child-in-need-of-services petitions; and truancy hearings.
1g. \$_____	512.87 – Civil Commitments – Mental Health/Alcohol	All costs associated with providing legal counsel and services for indigent adults and minor children subject to mental health and alcohol commitment proceedings. This category also includes other miscellaneous commitments, e.g. infectious disease commitment petitions.
1h. \$_____	512.88 – Civil Commitments – Sexual Predator	All costs associated with providing legal counsel and services for indigent adults subject to a sexual predator petition.
1i. \$_____	512.89 – Extraordinary Criminal Case Expenses	All costs associated with providing legal counsel and services for indigent adults or juveniles charged with a crime in superior or juvenile court for which a jurisdiction may be eligible for reimbursement of expenses under the extraordinary criminal justice expense act (RCW 43.330.190).

The above information was () was not () derived from the State Auditor’s Budgeting Accounting & Reporting System (BARS) categories. If BARS category codes are not currently used for public defense budget reporting, when will the BARS reporting system be implemented?

1j. If the county paid for attorneys to represent children in juvenile dependency and termination of parental rights actions, please list the total spent for children’s representation. \$ _____

2. In 2009, attorneys providing indigent defense representation had the following caseloads:

Fill in section 2(a) if the county has a public defender agency, such as a department of assigned counsel or one or more non-profit public defense firm(s) whose practice is limited to public defense.

2(a) Counties with public defender agencies.	Number of cases assigned to public defender (see question 2i below)	Number of probation violations and other miscellaneous hearings assigned	Number of full-time equivalent public defenders	Number of cases assigned to conflict counsel	Average per attorney caseload, if available
Superior Court adult felonies					
District Court adult misdemeanors and gross misdemeanors (see question 2ii below)					
Juvenile Court offender cases					
Juvenile Court dependency/termination cases					
“Becca” cases (truancy contempt, at-risk youth, CHINS)					
Civil commitment-Mental Health/Alcohol					

2i. How does the court count case assignments when an attorney withdraws from a case before the case is completed and later another attorney is appointed? For example, if the appointed attorney withdraws because the defendant has disappeared and a warrant is issued, and later the defendant returns and another attorney is appointed, does this get counted as two cases? _____

2ii. Does the number of District Court cases reported above include any municipal court cases for which the county provides public defense? Yes () No () If yes, how many are municipal court cases? _____

Fill in section 2(b) if the county contracts with private attorneys/firms for public defense services or if public defense attorneys are appointed by the court from a list.

2(b) Counties with contract or list-appointed public defense attorneys	Number of cases assigned to public defense attorneys(see question 2i above)	Number of probation violations and other miscellaneous hearings assigned	Number of attorneys with public defense contracts (or on court’s appointment list)	Average per attorney caseload, if available
Superior Court adult felonies				
District Court adult misdemeanors and gross misdemeanors (see question 2ii above)				
Juvenile Court offender cases				
Juvenile Court dependency/termination cases				
“Becca” cases (truancy contempt, at-risk youth, CHINS)				
Civil commitment-Mental Health/Alcohol				

3. If the county has public defense contracts, complete the Table of Public Defense Contracts (Table I), and provide a copy of each current contract in alphabetical order by attorney name. (If possible, please provide scanned copies of contracts, by CD or email attachment. Hard copies are acceptable.)
4. If the county trial courts appoint public defense attorneys from a list, provide the name of each attorney and the compensation paid per case or per hour in the Table of List-Appointed Public Defense Attorneys (Table II).

Please indicate in the table below **and** attach a narrative paragraph explaining how the county used its RCW 10.101 funds in 2010, and how the funds will be used in 2011. (The table below reflects common allowed uses of funds. See the attached policy for a list of allowed and prohibited uses.) Note that state funds cannot be used to supplant county funds that were being spent on public defense services prior to the initial disbursement of state funds (2006 for most counties).

5.

Common Allowed Uses of State Funding:	2010	2011
Creating a county or regional public defense agency		
Providing an attorney coordinator who oversees contracts with attorneys providing public defense		
Adding attorneys to lower public defense caseloads		
Adding investigator services		
Adding expert services		
Increasing public defense attorney compensation		
Providing public defense services at preliminary appearance calendars		
Providing interpreter services for attorney-client interviews and communications		
Other (please explain) _____		

6. In accordance with RCW 10.101.050 and RCW 10.101.060:

- a. Has the county adopted or recently updated a public defense standards ordinance?
Yes () No (). If yes, please attach the current standards ordinance or relevant section of county code. If no, please explain the situation.

- b. Does the county require private attorneys who contract to provide public defense services to report all of their public defense contracts and “hours billed for nonpublic defense legal services ... including number and types of private cases?” Yes () No () If no, please explain the situation. (See attached OPD “Time Reporting Policy.”)

- c. Does the county require attorneys who provide public defense services to attend seven hours of OPD-approved training per calendar year? Yes () No () If no, please explain the situation. (See attached OPD “Training Policy.”)

- d. Does the county provide for extra compensation in cases of extraordinary complexity?
Yes () No () If no, please explain the situation.

- e. Does the county identify funds specifically for the purpose of paying defense experts?
Yes () No () If no, please explain the situation.

- f. Does the county identify funds specifically for the purpose of paying defense investigators?
Yes () No () If no, please explain the situation.

- g. Do the county's public defense contracts require the contract attorneys to compensate conflict counsel, investigators or experts from the proceeds of the contract? Yes () No () If yes, please explain the situation.

7. Who does the county designate to receive and investigate complaints about public defense services? Please provide the name and contact information for the person/office.

8. How are indigent defendants notified of the complaint policy and procedure?

9. Does the Superior Court administer any criminal specialty courts (for example, drug court or mental health court)? Yes () No () If yes, what type(s) of specialty court(s)?

10. Does the District Court administer any criminal specialty courts (for example, mental health court or drug court)? Yes () No () If yes, what type(s) of specialty court(s)?

11. Does the county offer any adult diversion programs? Yes () No () If yes, describe the diversion program(s).

12. Does the Superior Court in criminal matters routinely provide a public defense attorney to represent indigent defendants at:
- a. In-custody preliminary appearance calendars (as defined by CrR 3.2.1)? Yes () No ()
 - b. Out-of-custody preliminary appearance calendars? Yes () No ()
 - c. If a defendant requests counsel at the preliminary appearance calendar, is the case continued pending appointment? Yes () No ()

13. In juvenile offender matters does the Juvenile Court routinely provide a public defense attorney to represent indigent juvenile defendants at:
- Every in-custody first appearance (as defined in JuCR 7.3 & 9.2(d))? Yes () No ()
 - Every out-of-custody first appearance? Yes () No ()
 - If a juvenile requests counsel at first appearance, is the case continued pending appointment? Yes () No ()
14. Does the District Court in criminal matters routinely provide a public defense attorney to represent indigent defendants at:
- In-custody first appearance calendar (as defined by CrRLJ 3.2.1)? Yes () No ()
 - Out-of-custody preliminary appearance calendars? Yes () No ()
 - If a defendant requests counsel at the preliminary appearance calendar, is the case continued pending appointment? Yes () No ()
15. Please describe the county's indigency screening procedure and attach any related written county policies or screening documents used in Superior Court.
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16. Please describe the county's indigency screening procedure and attach any related written county policies or screening documents used in juvenile offender matters.
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17. Please describe the county's indigency screening procedure and attach any related written county policies or screening documents used in District Court.
-
18. As a result of recent quality improvements the county has implemented in its public defense program, has the county identified/quantified other positive outcomes? Yes () No ()
If yes, please list the other positive outcomes below or attach a separate document. (Examples might include reduced jail populations, fewer warrants for failure to appear, reduced case time to completion, etc.)
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Certification:

I declare under penalty of perjury under the laws of the State of Washington that the foregoing information is true and correct.

Signature

Date

Printed Name

Title

Place

Washington State Office of Public Defense
Table I: Public Defense Contracts

Name of attorney/firm	Number of Superior Court cases per contract	Number of District Court cases per contract	Number of Juvenile Court offender cases per contract	Number of dependency/ termination cases per contract	Conflict cases only? Yes/No (If yes, list payment)

Washington State Office of Public Defense
Table II: List-Appointed Public Defense Attorneys

Name of Attorney/Firm	Method and Rate of Payment (per case/per hour, etc.)	Number of Cases Assigned (specify case type, e.g. felony, misdemeanor, juvenile, etc.)

WASHINGTON STATE OFFICE OF PUBLIC DEFENSE
ESTIMATED 2010 COUNTY FUNDING DISTRIBUTION FOR USE DURING CALENDAR YEAR 2011

County	2009	2009	2010 Total
	Population	Filings	Distribution
Adams	18,000	201	\$29,025
Asotin	21,500	190	\$29,701
Benton	169,300	1,244	\$157,567
Chelan	72,600	630	\$78,854
Clallam	69,500	549	\$72,319
Clark	431,200	2,111	\$318,685
Columbia	4,100	38	\$12,821
Cowlitz	99,600	1,379	\$138,613
Douglas	37,600	236	\$39,128
Ferry	7,800	40	\$14,427
Franklin	72,700	462	\$67,904
Garfield	2,250	25	\$11,233
Grant	86,100	674	\$87,114
Grays Harbor	71,200	556	\$73,455
Island	80,300	278	\$58,897
Jefferson	29,000	221	\$34,718
King	1,909,300	6,659	\$1,205,418
Kitsap	247,600	1,695	\$218,282
Kittitas	39,900	343	\$47,044
Klickitat	20,200	203	\$30,033
Lewis	75,200	742	\$87,217
Lincoln	10,450	94	\$19,016
Mason	56,800	488	\$63,266
Okanogan	40,500	366	\$48,788
Pacific	21,800	203	\$30,671
Pend Oreille	12,900	84	\$19,338
Pierce	813,600	5,839	\$714,991
San Juan	16,300	41	\$17,881
Skagit	118,900	1,069	\$126,028
Skamania	10,800	90	\$18,894
Snohomish	704,300	2,346	\$442,925
Spokane	465,000	4,701	\$501,583
Stevens	44,000	239	\$41,875
Thurston	249,800	1,999	\$239,045
Wahkiakum	4,100	24	\$11,906
Walla Walla	59,200	416	\$59,513
Whatcom	193,100	1,570	\$188,380
Whitman	43,300	211	\$39,765
Yakima	238,400	2,380	\$259,424
Total	6,668,200	40,636	\$5,655,744

Note: The estimated funding amounts for each county may differ from current funding amounts. Funding differences are due primarily to a county's increase or decrease in felony filings in 2009 compared to 2008. Felony filings are a significant factor in the funding distribution formula established by RCW 10.101.070. City grant funds are not reflected in this Estimated County Funding Distribution table (RCW 10.101.080).

WASHINGTON STATE OFFICE OF PUBLIC DEFENSE

COUNTY/CITY USE OF STATE PUBLIC DEFENSE FUNDING (as amended June 2008)

State funds disbursed to counties and cities pursuant to Chapter 10.101 RCW cannot be used to supplant local funds that were being spent on public defense services prior to the initial disbursement of state funds. State funds must be spent to improve the quality of legal representation directly received by indigent defendants. The funds cannot be spent on purely administrative functions. Following are guidelines regarding permitted use of state public defense funds.

1. State public defense funding under Chapter 10.101 RCW *may* be used in the following ways:

- a) Additional investigator services
- b) Additional expert services
- c) Creation of a public defense office
- d) New quality monitoring by an attorney coordinator who can act as a legal supervisor for the attorneys providing public defense (but non-attorney administrative employees of the county or city are not an approved use of funds)
- e) Computers or access to electronic legal research systems for public defenders
- f) Increase in public defense attorney compensation
- g) Provision of public defense services at first appearance calendars (or increase of first appearance services if public defenders are already provided)
- h) Addition of more attorneys to lower public defense caseloads
- i) Addition of social worker services to assist public defense attorneys
- j) Direct training costs to train public defense attorneys
- k) Evaluations of defendants for sentencing options, such as drug evaluations, SSOSA, DOSA
- l) Provision of internet connectivity (e.g. wireless) for public defense attorneys
- m) Provision of interpreter services for attorney-client interviews and communication (but in-court interpreter appointments required under Chapter 2.43 RCW are not an approved use of funds)

2. State public defense funding under Chapter 10.101 RCW *may not* be used in the following ways:

- a) Supplanting county or city funds used for public defense services prior to the initial disbursement of state funds to the county or city
- b) Billing or other administrative costs incurred by the county or city in administering the public defense program
- c) Indigency screening
- d) County, city or court technology systems or administrative equipment
- e) County or city attorney time, including advice on public defense contracting, except as provided in Section 1(d) above.

OPD PUBLIC DEFENSE IMPROVEMENT PROGRAM – CONTRACT ATTORNEY TIME REPORTING REQUIREMENT

All attorneys providing public defense services under contract to a county or city, must make an annual report to the contracting jurisdiction on the extent of their private caseload, if any.

As used in RCW 10.101.050, non-public defense cases are an attorney's private cases worked on during the previous year.

Attorney reports are required to provide the following information annually:

- (1) The number and type of cases in their private practice. (i.e. cases handled outside a defense contract including but not limited to retained cases of any type),
- (2) The number and type of other public defense contracts, if any, and
- (3) The total hours billed for non-public defense cases, if any.

Number and type of non-public defense cases handled: Case types may be indicated by general category, e.g. family law, retained criminal case or personal injury. The number of cases for each type should be reported.

Total hours billed for non-public defense cases: Attorneys who bill for some or all of their non-public defense representation on an hourly basis must report the total number of personal hours billed. Attorneys who accept retained cases on a flat fee basis (cases in which a negotiated fee is charged for the entire case) or on a contingency fee basis should indicate the fee types when reporting their cases.

COMMENTARY

Non-public defense case reporting by contract public defense attorneys is mandated under RCW 10.101.050. These reports permit a contract attorney's actual caseload to be monitored and assist in determining appropriate compensation levels for public defense services.

Attorneys are not required to provide client or case names or other identifying information, case fee amounts or hourly billing rates.

This reporting requirement does not apply to attorneys who accept only periodic court appointments to public defense cases.

The jurisdiction must forward caseload reports when applying for public defense improvement funds. OPD will ask contracting jurisdictions to report contract attorneys' case type reports as part of the jurisdiction's case statistics information on the annual RCW 10.101 application.

OPD PUBLIC DEFENSE IMPROVEMENT PROGRAM – TRAINING REQUIREMENTS

Jurisdictions that apply for public defense funds shall require that all attorneys providing services annually attend at least seven hours of trainings approved by the Washington State Office of Public Defense (OPD).

An approved training is a program or course of education in criminal defense offering instruction that improves an individual's substantive legal knowledge in the areas of criminal law, criminal procedure, ethical knowledge or trial skills. Such training may include areas of civil practice in which an attorney provides public defense services such as dependency, civil contempt or civil commitment matters.

PROCEDURE

The CLE programs that OPD, the Washington Defender Association (WDA), the Washington Death Penalty Assistance Center (WDPAC), and the Washington Association of Criminal Defense Lawyers (WACDL) offer shall be considered "approved trainings." In addition, courses approved by the Washington State Bar Association (WSBA) shall be considered "approved training" if the programs are related to criminal defense and are sponsored or presented by the following organizations:

Washington State Bar Association Continuing Legal Education Department;
University of Washington School of Law;
Seattle University School of Law; or
Gonzaga University School of Law.

An attorney who has attended a course or program other than one of those listed above shall apply to OPD for approval before the program or by the end of the calendar year in which the course or program is held. OPD shall approve the CLE if taught by professionals knowledgeable in the applicable subject area and if the course will improve an attorney's substantive legal knowledge, ethical knowledge or trial skills. Approval shall be at the discretion of the OPD director. Appeals of denials of approval may be made to the OPD Advisory Committee.

COMMENTARY

This policy comports with RCW 10.101.050, which requires that "attorneys providing public defense services attend training approved by the Office of Public Defense at least once per calendar year." It is also consistent with the Public Defense Standards endorsed by the Washington State Bar Association, (Standard Nine: Training), which requires that attorneys providing public defense services should participate in regular training programs on criminal defense law, including a minimum of seven hours of continuing legal education annually in areas relating to their public defense practice."

WASHINGTON STATE OFFICE OF PUBLIC DEFENSE

APPEAL PROCESS FOR COUNTY / CITY FUNDING UNDER RCW.10.101.060

RCW 10.101.060 directs the Office of Public Defense (OPD) to determine county and city eligibility for certain state public defense funding, and further provides for appeal if OPD determines a county or city to be ineligible and denies funding. The following procedure shall be used by counties and cities to appeal an OPD determination of ineligibility/denial of funding pursuant to Chapter 10.101 RCW.

1. OPD will notify the county or city of the denial in writing. If a county or city disagrees with the determination of the Office of Public Defense as to eligibility, the county or city may file an appeal.
2. All appeals shall:
 - a. Be filed in writing and signed by an authorized representative of the appellant.
 - b. Clearly and briefly state why the appellant believes OPD's determination is in error.
 - c. Be received by the OPD Advisory Committee within 10 court days of the date of OPD's denial letter.
3. Appeals shall be directed to:
Office of Public Defense Advisory Committee
c/o Washington State Office of Public Defense
P.O. Box 40957
Olympia, WA 98504-0957
4. The OPD Advisory Committee will consider an appeal at its next quarterly meeting at least two weeks after receipt of the appeal by the Advisory Committee, except that the chair may call a special meeting to consider an appeal. The Advisory Committee will notify the appellant of the time and location of the Advisory Committee meeting at which the appeal will be considered. The appellant may submit written materials and make a brief oral presentation to the Advisory Committee.
5. The Advisory Committee will notify the county or city of its final decision in writing within 10 court days of the Advisory Committee meeting at which the appeal was considered.
6. As provided in RCW 10.101.060, the decision of the Advisory Committee is final.